

**M&S Painting Co. and International Brotherhood
of Painters & Allied Trades, AFL-CIO, Local
203. Case 17-CA-17168**

May 18, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by the Union on January 14, 1994, and an amended charge filed on February 25, 1994, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 28, 1994, against M & S Painting Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and complaint, the Respondent failed to file an answer.

On April 1, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On April 5, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 15, 1994, notified the Respondent that unless an answer was received by March 21, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietorship doing business as M & S Painting Company, with an office and place of business in Springfield, Missouri, has been engaged as a painting contractor in the construction industry doing residential and commercial painting. Dur-

ing the 12-month period ending January 31, 1994, the Respondent, in conducting its business operations, purchased and received at its Springfield, Missouri facility goods valued in excess of \$50,000 from other enterprises, including Glidden Paint, located within the State of Missouri, which enterprises had received these goods directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about December 15, 1993, the Respondent threatened its employees with unspecified reprisals because they supported the Union. On or about December 16 and 27, 1993, the Respondent interrogated its employees about their union membership, activities and sympathies. On or about December 28, 1993, the Respondent caused a Springfield, Missouri area law enforcement agency to remove the Respondent's employees from the Respondent's facility because the Respondent's employees engaged in the protected concerted activity of demanding that the Respondent pay them wages the Respondent owed them, and informed the employees that it had caused the removal. On or about December 28, 1993, the Respondent interrogated its employees concerning the Respondent's employees' engaging in the protected activity of demanding that the Respondent pay them wages the Respondent owed them.

About December 28, 1993, the Respondent discharged its employees Bryan Brotherton, Scott Garrett, Frank Grider, Greg Hackler, Richard Hess, Jared Hughes, John McKinney, and Larry Strawn because these employees concertedly complained to the Respondent regarding wages, hours, and working conditions of the Respondent's employees and to discourage employees from engaging in these or other concerted activities. About December 16, 1993, the Respondent discharged its employee Michael Manning. The Respondent discharged all of the above-named employees because these employees formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization and has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged

in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Bryan Brotherton, Scott Garrett, Frank Grider, Greg Hackler, Richard Hess, Jared Hughes, John McKinney, Larry Strawn, and Michael Manning, thereby interfering with, restraining, and coercing employees in the exercise of the right to engage in protected concerted activity and also discriminating in regard to the hire or tenure or terms or conditions of employment of its employees and thereby discouraging membership in a labor organization, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, M & S Painting Company, Springfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisals because they support International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization.

(b) Interrogating its employees about their union membership, activities, and sympathies or their protected concerted activity including the employees' demand that wages owed to them be paid.

(c) Causing, or informing employees that it has caused, any law enforcement agency to remove its employees from its facility because the employees are engaged in protected concerted activity, including demanding that wages owed to employees be paid.

(d) Discharging employees because they engage in protected concerted activity including demanding that wages owed to employees be paid.

(e) Discharging or otherwise discriminating in regard to the hire or tenure or terms or conditions of employment of its employees because they form, join, or assist International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization, thereby discouraging membership in International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Bryan Brotherton, Scott Garrett, Frank Grider, Greg Hackler, Richard Hess, Jared Hughes, John McKinney, Larry Strawn, and Michael Manning immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Springfield, Missouri, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 18, 1994

William B. Gould IV,	Chairman
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James M. Stephens,	Member
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Charles I. Cohen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with reprisals because they support International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization.

WE WILL NOT interrogate our employees about their union membership, activities, and sympathies or their protected concerted activity including the employees' demand that wages owed to them be paid.

WE WILL NOT cause, or inform employees that we have caused, any law enforcement agency to remove our employees from our facility because the employees are engaged in protected concerted activity, including demanding that wages owed to them be paid.

WE WILL NOT discharge employees because they engage in protected concerted activity including demanding that wages owed to employees be paid.

WE WILL NOT discharge or otherwise discriminate in regard to the hire or tenure or terms or conditions of employment of our employees because they form, join or assist International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization, thereby discouraging membership in International Brotherhood of Painters & Allied Trades, AFL-CIO, Local 203 or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Bryan Brotherton, Scott Garrett, Frank Grider, Greg Hackler, Richard Hess, Jared Hughes, John McKinney, Larry Strawn, and Michael Manning immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

M & S PAINTING COMPANY